

**End of the 2007-2008  
Regular State Legislative Session Report**

**Assembly Bills Signed**

**AB 2569** (De Leon) Rescission.

Sponsor: Author

Status: 09/30/2008-Chapter 604, Statutes of 2008.

This statute will require all health plans and insurers to offer coverage to persons whose individuals coverage was rescinded and to do so without medical underwriting. They must offer an individual policy that provides equal benefits and inform enrollees of this new right, at minimum, when rescinding an enrollee's coverage. The statute will also require persons assisting applicants with their health insurance application to attest in writing that the application is accurate and complete, that he or she explained to the applicant the risk of providing inaccurate information and that the applicant understood the application.

**AB 2589** (Solorio) Health care coverage: public agencies.

Sponsor: Santa Ana School District

Status: 09/26/2008-Chapter 331, Statutes of 2008

This statute will require health plans and health insurers to annually disclose to governing boards of public agencies with which they have a group contract or policy the name and address of and the amount paid to any agent, broker, or individual involved in "transactions" with the public agency or to whom they paid a commission or fee related to the public entity's contract or policy.

**Senate Bills Signed**

**SB 697** (Yee) Balance billing.

Sponsor: Author

Status: 09/30/2008-Chapter 606, Statutes of 2008.

This statute will explicitly prohibit any health care provider given documentation that a person is enrolled in the Healthy Families Program or the Access for Infants and Mothers program from "balance billing" these subscribers for health care services.

See press release (pages 3-4).

**SB 1379** (Ducheny) Fines transferred to MRMIP.

Sponsor: California Medical Association

Status: 09/30/2008-Chapter 607, Statutes of 2008.

This statute will, immediately upon signing, transfer \$1 million of fines paid by health care service plans collected by Department of Managed Health Care (DMHC) to the Steven M. Thompson Physician Corps Loan Repayment Program (STPCLRP), and transfer \$10 million to the

Major Risk Medical Insurance Program (MRMIP). In the future, the DMHC will annually transfer the first \$1 million in fines to the STPCLRP and any additional fines to the MRMIP.

See press release (pages 3-4).

**SB 1553** (Lowenthal) Health care service plans.

Sponsor: California Society of Clinical Social Work, California Association of Marriage and Family Therapists

Status: 09/30/2008-Chapter 722, Statutes of 2008

This statute will prohibit health plans regulated by Department of Managed Health Care from determining an approval, modification or denial of a health care provider's request for authorization or reimbursement for inpatient or outpatient mental health services based on whether a patient's admission was voluntary or involuntary or on a patient's method of transportation to a health facility. This will apply to determinations made before, during or after the service was provided. It will also require all health plans that provide mental health services, except those primarily serving Medi-Cal or Healthy Families subscribers, to include information about accessing mental health services on their websites.



## PRESS RELEASE

09/30/2008 GAAS:691:08 FOR IMMEDIATE RELEASE

### **Gov. Schwarzenegger Signs Urgently Needed Legislation to Protect Consumers from Unfair Health Care Practices**

Governor Arnold Schwarzenegger has signed legislation to increase consumer protections by further limiting the unfair practice of "balance billing," an anti-consumer tactic that puts patients in the middle of payment disputes between health plans and health care providers. He has also signed legislation to prevent certain health insurance rescissions and to redirect funds collected from HMO fines to aid those having difficulty paying health care bills and obtaining health care coverage. The Governor signed these bills because of the urgent need to protect consumers from unfair health care billing and plan practices, but he continues to believe that health care reform must be comprehensive and that fixing California's broken health care system will require more than a piecemeal approach and incremental solutions, which was reflected in the majority of bills sent to his desk this year on the issue.

"By further limiting unfair balance billing practices that target low-income consumers and prohibiting rescission of an entire family's health insurance policy when one family member is found to have misrepresented their health history, this legislation will improve consumer protections against unfair health care practices," Governor Schwarzenegger said. "These deplorable practices further highlight the need to reform our broken health care system. Californians deserve a financially sustainable and comprehensive health care reform plan that promotes prevention, shares responsibility, covers all Californians, contains costs and keeps our emergency rooms open and operating."

[SB 697](#) by Senator Leland Yee (D-San Francisco) will explicitly prohibit all health care providers from seeking additional payment from Healthy Families Program and Access for Infants and Mothers subscribers for covered health care benefits to supplement reimbursement received from health plans or insurers, a practice also known as balance billing. This practice is already prohibited for Medicare and Medi-Cal enrollees under existing federal and state laws.

Governor Schwarzenegger is committed to taking the consumer out of the middle of billing disputes between providers and health plans, and most recently, the Governor directed his Administration's Department of Managed Health Care (DMHC) to issue [new regulations](#) that makes balance billing, which is an anti-consumer tactic that puts patients in the middle of payment disputes between health plans and providers, an unfair billing practice. These regulations have been approved by the Office of Administrative Law and will take effect on October 15, 2008. In 2006, the Governor issued [Executive Order S-13-06](#) to protect insured Californians from balance billing. In addition, the Governor's comprehensive health care reform proposal calls for an end to balance billing by all providers, whether or not it is an emergency service.

Another measure to prevent surprise medical bills signed by the Governor is [AB 1203](#) by Assemblymember Mary Salas (D-Chula Vista) which requires a non-contracting hospital to obtain information from a patient covered by a health care service plan and provide that information to the patient's health plan or contracting medical group following a medical emergency but prior to providing post-stabilization care. This bill prohibits the non-contracting hospital from billing the patient for post-

stabilization care, except for applicable co-payments, co-insurance and deductible, unless the patient or the patient's spouse or guardian assumes financial responsibility for care, or the hospital is unable to obtain the health plan's name and contact information.

Further implementing important consumer protections, the Governor signed [AB 2569](#) by Assemblymember Kevin De León (D-Los Angeles) which prohibits health plans and insurers from revoking an entire family's coverage based on misinformation from a single family member and requires the health plan or insurer to continue health care coverage for family members covered prior to the rescission. This bill would also place a duty on insurance agents and brokers to assist applicants in answering health questions completely and accurately, and explain to applicants the risks and potential consequences of not providing complete and accurate information.

In July, the Governor signed [AB 1150](#) by Assemblymember Ted Lieu (D-Torrance) which bans health insurance companies from rewarding their employees for canceling or limiting a patient's health insurance. The Governor and Speaker Núñez also worked together to pass [AB x1 1](#), the Health Care Security and Reduction Act. This bill would have required that all Californians take responsibility for their health coverage while guaranteeing that no Californian is rescinded and turned away from buying insurance based on their age or medical history.

As part of the Governor's commitment to covering Californians and stopping unfair health care rescissions, his [DMHC](#) has reached [groundbreaking agreements](#) with all of California's major health plans over the last six months where they've agreed to reinstate coverage to California consumers whose health care coverage had been rescinded.

The Governor also signed [SB 1379](#) by Senator Denise Ducheny (D-San Diego), and as a result, the fines the DMHC collects from California's major health plans will now go into a pool to help some of the persons who have been denied health insurance due to pre-existing medical conditions and to encourage new physicians to practice in underserved areas. The bill transfers \$10 million to the Major Risk Medical Insurance Program (MRMIP) for uninsurable persons and in addition transfers \$1 million in fines to the Steven M. Thompson Physician Corps Loan Repayment Program (STPCLRP). In following years, the DMHC will annually transfer the first \$1 million in fines to the STPCLRP and any additional fines to the MRMIP.

## Assembly Bills Vetoed

**AB 2** (Dymally) MRMIB funding.

Sponsor: Author

Status: 09/30/2008-Vetoed by the Governor

Note: MRMIB support.

This bill would have expanded the state's capacity for serving medically uninsurable persons. It would have done so by requiring carriers in the individual insurance market to either pay a fee to support the Major Risk Medical Insurance Program (MRMIP), or provide coverage directly to medically uninsurable persons assigned to carriers by the State. The bill would have set the fee amount in statute. It would have required the State to provide \$40 million in Proposition 99 funds for the MRMIP annually, the amount MRMIP has received for the last 12 years. It would have made MRMIP eligible for federal high-risk pool funding by eliminating the MRMIP annual benefit cap of \$75,000. It would have authorized the Major Risk Medical Insurance Board (MRMIB) to base the amount of MRMIP subscriber premiums on family income. It also would have made certain changes to MRMIP eligibility requirements and requires lower cost sharing for preventive services and services that treat chronic conditions. It would have required MRMIB to make several reports to the legislature on program implementation, alternative ways to cover medically uninsurable people, and the adequacy of rates charged for preferred provider organization (PPO) coverage under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### Governor's Message:

The state's high risk pool was enacted in response to the failure of the health insurance market to provide coverage to individuals with pre-existing medical conditions, even if they could afford to pay higher premiums. California has subsidized this coverage for thousands of individuals since the inception of the program. Unfortunately, creating a mandate and assessing a fee based on covered lives in the individual market is not the answer.

Mandates such as this only serve to make health care more expensive for those who can least afford it. Most uninsured Californians cannot obtain coverage because they cannot afford the premiums, no matter whether they are high-risk or not. This bill would allow health insurance companies to pass the fee onto their enrollees, making it more expensive. This population is the most sensitive to price. Many must bear the entire cost of their coverage because they are self-employed or their employers do not offer coverage - a bill such as this only exacerbates their burden.

Comprehensive health care reform that guarantees issuance of coverage to all individuals, along with an individual mandate, cost-containment, prevention and shared responsibility is the only solution for our health care crisis.

I cannot support this bill because it provides a limited solution without addressing a much larger problem. Californians demand and deserve a solution to solve the broader challenge facing us all.

Sincerely,

Arnold Schwarzenegger

**AB 16** (Hernandez) Human papillomavirus vaccination.

Sponsor: Author

Status: 09/30/2008-Vetoed by the Governor

This bill would have changed the authority for making referrals for annual cervical cancer screening to a licensed health care practitioner. Current law gives authority to “the patient’s physician, surgeon, nurse practitioner or certified nurse midwife.” The bill also would have required that individual and group health policies which cover cervical cancer treatment or surgery, issued on or after January 1, 2009, also cover a vaccination for human papillomavirus.

Governor’s Message:

The addition of a new mandate, no matter how small, will only serve to increase the overall cost of health care.

California currently has 44 mandates on its health care service plans and health insurance policies. While these mandates are well-intentioned, the costs associated with guaranteed coverage means that these costs are passed through to the purchaser and consumer. These mandates are a significant driver of cost. Every day, a growing number of employers and individuals are struggling to pay for their health care. We cannot afford to increase these costs without enacting other measures that improve efforts aimed at prevention, address affordability of care and share responsibility between individuals, providers, employers and government.

For these reasons, I am returning this bill without my signature.

Sincerely,

Arnold Schwarzenegger

**AB 368** (Carter) Hearing aids.

Sponsor: Author

Status: 09/30/2008-Vetoed by the Governor

This bill would have required health care service plans and health insurers to offer or provided coverage up to \$1,000 for hearing aids to all enrollees, subscribers, and the insured less than 18 years of age. The bill would have provided that the requirement would have not applied to certain types of insurance.

Governor’s Message:

This bill is similar to measures I vetoed in 2004 and 2006. The addition of a new mandate, no matter how small, will only serve to increase the overall cost of health care. Increasing the cost of coverage by mandating benefits, may ultimately leave more children without any coverage.

I would urge the Legislature to work with me next year on a comprehensive health care reform solution that provides no-cost or low-cost comprehensive coverage to all children below 300% of the federal poverty level, regardless of their documentation status.

For this reason, I am unable to sign this measure.

Sincerely,

Arnold Schwarzenegger

**AB 1945** (De La Torre) Rescission prior approval.  
Sponsor: California Medical Association  
Status: 09/30/2008-Vetoed by the Governor

This bill would have required health plans and insurers to obtain prior approval of the Department of Managed Health Care (DMHC) Director and the California Department of Insurance (CDI) Commissioner respectively before rescinding any health coverage. It would have required the DMHC Director and CDI Commissioner to jointly establish an independent process for reviewing health plans' and insurers' requests to rescind an enrollee's coverage. It would have allowed DMHC or CDI to approve a rescission only if the health plan or insurer demonstrated that the enrollee "made a material misrepresentation or material omission" about his or her medical history in the application process. The bill would have also permitted each regulator to assess other administrative penalties and suspended or revoked a plan's license or insurer's business certificate if they rescinded coverage without prior DMHC or CDI approval. It would have also required DMHC and CDI to establish a pool of approved questions for use on individual coverage applications by health plans and insurers that elect to sell individual coverage.

Governor's Message:

I believe that unfair rescissions are a deplorable practice. My Department of Managed Health Care has fought for - and won - significant settlements with the industry that have significantly changed the marketplace and reinstated coverage for thousands of consumers.

The Department's settlements are unprecedented and have fundamentally changed the way health plans operate in this state. The individual insurance market is fragile, and we must balance the need for strong consumer protections with the recognition that unintended consequences can tighten this market even more. Unfortunately, the provisions of this bill will only increase costs and further restrict access for over 2 million Californians that currently obtain coverage in the individual market.

My Administration proposed comprehensive legislation to address this problem. In particular, my proposal contained several strong consumer protections that this bill fails to address. My proposal established a standard application to remove any possibility of plans using different health questions to disadvantage applicants. This bill does not contain that protection. My proposal required agents and brokers to sign under penalty of perjury that they had not altered an applicant's answers. Penalties were levied if they engaged in this unscrupulous behavior. This bill does not contain that protection. My proposal clearly outlined the rules that plans and insurers had to follow when considering whether to offer a contract to an applicant. This bill does not contain that protection. My proposal didn't allow plans to rescind or cancel if a doctor failed to inform a patient of a medical condition. This bill does not contain that protection. My proposal contained a two-year lookback protection that prevented plans from rescinding or cancelling after two years. This bill does not contain that protection. My proposal protected family members and required coverage to be continued without additional underwriting or increase in premiums. This bill does not contain that protection.

This bill was written by the attorneys that stand to benefit from its provisions. In rushing to protect a right to litigate, the proponents failed to consider the real consumer protections that are needed.

I would call on the Legislature next year to work with my Administration on real legislation that enacts important protections for consumers without increasing premiums and reducing coverage for those who need it most.

For these reasons, I cannot support this bill.

Sincerely,

Arnold Schwarzenegger

### **Senate Bills Vetoed**

**SB 775** (Ridley-Thomas) Childhood lead poisoning.

Sponsor: Physicians For Social Responsibility, National Health Law Program

Status: 09/27/2008-Vetoed by Governor

This bill would have required the Department of Public Health (DPH) to make information on lead poisoning available on its website and would have required providers primarily responsible for providing prenatal care to refer pregnant women to relevant information on the DPH website or provided other lead prevention information to pregnant women. It would have required DPH to report to the legislature and the public on the status and effectiveness of the state's lead poisoning prevention programs and lead screening activities, the number of children screened and those determined to have elevated blood levels. It would have also required the establishment of benchmarks for Healthy Families, Medi-Cal and the Child Health and Disability Prevention Program. It would have required the licensed health care provider who is a child's primary care practitioner to conduct or refer for a blood lead test when providing services to low-income children at specified ages who are enrolled in publicly funded programs and to document the lead testing on the child's immunization record. It would have also required the Department of Health Care Services (DHCS) and MRMIB to make available to DPH "all necessary information" related to the blood lead testing of participants in public health care programs.

#### Governor's Message:

While I support programs to reduce lead exposure for children, this bill is duplicative of existing state requirements and may jeopardize overall funding for lead poisoning prevention. Many of the bill's provisions are unnecessary and are already being accomplished administratively.

For these reasons, I am unable to sign this bill.

Sincerely,

Arnold Schwarzenegger

**SB 840** (Kuehl) Single-payer health care coverage.

Sponsor: Author

Status: 09/30/2008-Vetoed by the Governor

This bill would have established the California Healthcare System to be administered by the newly created California Healthcare Agency, under the control of a Healthcare Commissioner. The bill would have made all California residents eligible for specified health care benefits under the California Healthcare System, which would have, on a single-payer basis, negotiated for or set fees for health care services provided through the system and pay claims for those services. The bill would have provided that a resident of the state with a household income at or below 200 percent of the federal poverty level would have been eligible for the type of benefits provided

under the Medi-Cal program. The bill would have created several new offices to establish policy on medical issues and various other matters relating to the health care system.

Governor's Message:

According to the Legislative Analyst's Office, the bill is estimated to cost \$210 billion in its first full year of implementation and cause annual shortfalls of \$42 billion. To place this in proper perspective - our state budget deficit this year started at \$24.3 billion.

I cannot support a bill that places an annual shortfall of over \$40 billion to our state's economy.

Sincerely,

Arnold Schwarzenegger

**SB 973** (Simitian) California Health Benefits Service Program.

Sponsor: American Federation of State County Municipal Employees

Status: 09/30/2008-Vetoed by the Governor

This bill is essentially the same as SB 1622, which failed to meet the deadline for passage from the Senate Appropriations Committee. This bill would have create the California Health Benefits Service Program (CHBSP) within the Department of Health Care Services (DHCS). The CHBSP would have identified barriers and incentives to establishing joint-ventures between local initiatives, local health plans, County Organized Health Systems (COHS) and county health authorities with the County Medical Services Program (CMSP) and would have assisted local health care entities to support development of the joint-ventures. The bill would have also created a stakeholder committee with six members appointed by the DHCS Director, representing CSMP, health care providers, employers, and COHS, which would have reported findings to the Legislature by January 15, 2010 and annually thereafter. The bill would have required that all joint ventures be licensed by the Department of Managed Health Care (DMHC). The DMHC would have been allowed flexibility in issuing new, modified or combined licenses to local initiatives or COHS in order to contract with the MRMIB or to provide coverage in individual or group markets. The bill would have required private funding to be received by the state prior to implementing nearly all CHBSP activities.

Governor's Message:

I agree with the author and sponsor that health care options need to be affordable and accessible to the people of California. My comprehensive health care reform proposal would have created many of those options for people of all income levels. Unfortunately, this bill represents an extremely small provision of a much larger proposal.

I cannot support a one-sided, piecemeal approach to health care reform. Californians deserve a financially sustainable and comprehensive solution that promotes prevention, shares responsibility, covers everyone, contains cost and keeps our hospitals open.

The people of California demand more than incremental solutions to this problem. I would invite the Legislature to once again engage in the debate over a comprehensive solution that fixes our broken health care system.

For this reason, I cannot support this bill.

Sincerely,

Arnold Schwarzenegger

**SB 981** (Perata) Health care coverage: non-contracting hospital-based physician claims.

Sponsor: Author

Status: 09/30/2008-Vetoed by the Governor

This bill would have required health plans to pay a non-contracting emergency room physician the lesser of the physician's full charge or the newly created "interim payment standard," as defined, less copayments and deductibles. The bill specified that the interim payment standard for services provided to Healthy Families Program (HFP) enrollees would have been 125 percent of the Medi-Cal fee rate. The bill would have created various payment rates and standards for non-contracted emergency room physicians and would have required the Department of Managed Health Care (DMHC) to adjust the interim payment standard every 12 months. It would have created the Independent Dispute Resolution Process (IDRP) to resolve payment disputes between health plans and providers and would have authorized it to assess penalties on health plans that show a pattern of "willfully violating" the provisions of this bill or that "engage in practices intended to abuse" the IDRP. This bill would have authorized DMHC to seek civil penalties and would have permitted it to assess administrative penalties against non-contracting emergency room physicians, health plans or their contracting risk-bearing organizations for showing a pattern of willfully violating or a practice intended to abuse the IDRP and would have additionally required that the offender be assessed an administrative penalty consisting of the greater of either \$10,000 or three times the disputed amount. This bill would have become effective on July 1, 2009 and sunset on December 31, 2013.

Governor's Message:

This bill does not solve the problem facing California patients and only serves to highlight one of the many reasons I introduced my comprehensive health care reform proposal. Californians are paying a hidden tax on their health care which subsidizes care for the uninsured and allows providers to shift costs when they are not fully reimbursed by their payers. The insured population bears the brunt of this hidden tax and the larger it gets, fewer people are able to afford coverage.

This bill, in essence, asks for California to embrace this cost-shift, reward non-contracting physicians by assuring their continued financial slice of the pie, and allow the status quo to continue. I cannot agree to a measure that is a piecemeal approach to our broken health care system.

Our health care system relies on physicians, hospitals and health plans to work together. The patient that pays health insurance premiums should not be part of a payment dispute between these sophisticated market players. It is unfortunate that this bill takes sides in the dispute within the health care industry instead of taking the side of patients.

Until the Legislature can send me legislation that removes that patient from all disputes involving these parties, I direct my Department of Managed Health Care to aggressively continue in its efforts to identify unfair payment practices and keep patients from being caught in the middle.

Sincerely,

Arnold Schwarzenegger.

**SB 1440** (Kuehl) Minimum loss ratio.  
Sponsor: California Medical Association  
Status: 09/30/2008-Vetoed by the Governor

Current law does not limit the amount of administrative expenses that health plans or health insurers may pay with money derived from sources other than subscribers. This bill would have required full-service health care service plans or health insurers to spend at least 85% of the dues, fees, premiums, and other periodic payments received by the health plan or health insurer on health care benefits (referred to as the “minimum loss ratio” or MLR) beginning January 1, 2011. It would have exempted from compliance-verification those plans that are two-years old or less that DHCS or CDI determine are substantially different from those plans’ existing contracts or policies. The bill would have defined “health care benefits” for the purpose of determining administrative expenses. For the purpose of determining the cost/benefits ratio, the bill would have permitted a health plan or health insurer to average its total after-tax costs across all its California health care plan contracts or health insurer policies or those of its affiliated California plans or insurers, with specified exceptions allowed. The bill would have required these health plans and insurers, as of June 1, 2011, and then annually, to report to their regulator that they meet these requirements. It would have additionally required them to report, as of January 1, 2011, and then annually, to their regulator the MLR of each individual and group health plan product or health insurance policy in California and would have required them to disclose this information when presenting a plan for examination or sale to individuals or to groups of 50 or fewer individuals. The regulators would have been required to jointly adopt implementation regulations to require uniform reporting by plans and insurers. It would have also allowed regulators to fine or otherwise penalize health plans and insurers for failure to comply.

Governor’s Message:

This bill represents exactly what I did not want to see this year – a one-sided, piecemeal approach to health care reform. Californians deserve a financially sustainable and comprehensive health care reform plan that promotes prevention; shares responsibility between individuals, employers, providers and government; covers all Californians; contains cost; and keeps our emergency rooms open and operating.

My comprehensive health care reform contained a similar provision to what is proposed in this bill. However, my plan also contained a great deal more. I cannot support individual reform efforts that do not include the other essential components.

Taken in its isolated and singular fashion, this bill may weaken our already-broken system.

For these reasons, I am unable to sign this bill.

Sincerely,

Arnold Schwarzenegger.

**SB 1634** (Steinberg) Health care coverage: cleft palates.

Sponsor: California Society of Plastic Surgeons

Status: 09/30/2008-Vetoed by the Governor

This bill would have required health plans and health insurers, on or before July 1, 2009, to cover medically necessary orthodontic services for cleft palate procedures upon prior authorization and completion of the utilization review processes.

Governor's Message:

I am returning Senate Bill 1634 without my signature. This bill, while well-intentioned, will only serve to increase the overall cost of health care. The costs associated with new mandates means that those costs are passed through to the purchaser and consumer. They are a significant driver of cost. Every day, a growing number of employers and individuals are struggling to pay for their health care. We cannot afford to increase these costs without enacting other measures that improve efforts aimed at prevention, address affordability of care and share responsibility between individuals, providers, employers and government.

For these reasons, I am returning this bill without my signature.

Sincerely,

Arnold Schwarzenegger.